



**U.S. Customs and
Border Protection**

JUL 09 2010

The Honorable Jeff Sessions
United States Senate
41 West I-65 Service Road North, Suite 2300-A
Mobile, AL 366081

Dear Senator Sessions:

Thank you for your June 7, 2010 letter on behalf of your constituent, Mr. (b) (6), (b) (7)(C). Mr. (b) (6), (b) (7)(C) was inquiring about the classification of certain Mardi Gras costumes, hats, decorations and other related articles imported by his company, Toomey's Mardi Gras under the Harmonized Tariff Schedule of the United States (HTSUS).

In his correspondence, Mr. (b) (6), (b) (7)(C) voiced concerns about the classification by U.S. Customs and Border Protection (CBP) of his company's products as everyday use items, instead of as festive articles under heading 9505, HTSUS.

The subject of whether certain Mardi Gras and Carnival items are classifiable as festive articles was addressed by CBP in rulings HQ 966596, dated July 25, 2003, NY K87737, dated July 22, 2004, NY K80412, dated November 4, 2003, NY K89541, dated October 6, 2004, and NY H82664, dated July 12, 2001. In these rulings, CBP has consistently held that Mardi Gras and Carnival hats are not within the scope of heading 9505, HTSUS, which requires that to qualify as a costume, hats must be made of non-durable material and flimsy construction. *See* HQ W968139, dated October 5, 2006. The U.S. Court of Appeals for the Federal Circuit also addressed the issue of festive articles and held that an article may be classified as a festive article if "(1) it is closely associated with a festive occasion and (2) the article is used or displayed principally during that festive occasion." *Park B. Smith, Ltd. v. United States*, 347 F.3d 922, 927 (Fed. Cir. 2003) (citing *Midwest of Cannon Falls v. United States*, 122 F.3d 1423 (Fed. Cir. 1997)). The classification decision is based on the application of these criteria and is made on a case by case basis. The classification is not determined by whether the holiday associated with the merchandise is federally recognized.

Without further information about the specific items in question, we are unable to make a classification decision. If Mr. (b) (6), (b) (7)(C) disagrees with the decision made by the CBP port, he may file a protest pursuant to 19 United States Code § 1514.

The Honorable Jeff Sessions
Page 2

I appreciate your interest in U.S. Customs and Border Protection. If we may offer further assistance, please contact me at (202) 344-1760.

Sincerely,

(b) (6), (b) (7)(C)

Michael J. Yeager
Assistant Commissioner
Office of Congressional Affairs